

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

USDS SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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00 CR 121 (PKC)

-against-

ORDER

JULIO NUNEZ,

Defendant  
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P. KEVIN CASTEL, U.S.D.J.

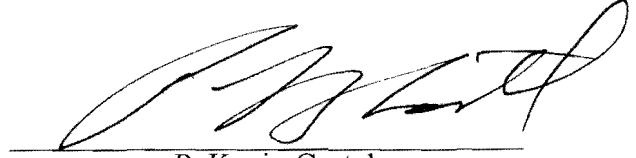
I have reviewed the parties' submissions on the defendant's Motion for Discharge Pursuant to 18 U.S.C. § 4246. The parties are invited to submit letter briefs supplementing the arguments set forth in their motion papers. Specifically, they are invited to address in greater detail whether the United States Constitution requires a criminal defendant to be competent in order to be sentenced, whether an order of "commitment constituting a provisional sentence of imprisonment" under 18 U.S.C. § 4244(d) is a criminal sentence, and whether defendant Julio Nunez, in view of the Bureau of Prisons Report dated August 23, 2004, was competent at the time that he received his provisional sentence. See, e.g., Nicks v. United States, 874 F. Supp. 591, 601 (S.D.N.Y. 1995) (applying section 4244 as a competency statute); United States v. Wolfson, 616 F. Supp. 2d 398, 420-22 (S.D.N.Y. 2008) (same). To what extent is 18 U.S.C. § 4244 limited to instances in which a defendant is competent yet "suffers from a mental disease or defect"? The parties should also set forth in greater detail their views as to the proper remedy if the Court were to conclude that the defendant was not competent at the time of the provisional sentencing.

The parties may submit their letter briefs by November 8, 2010. Any responses

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should be submitted by November 22. I will hear argument on the pending motion on December 17, 2010 at 11:30 a.m.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Castel', written over a horizontal line.

P. Kevin Castel  
United States District Judge

Dated: New York, New York  
October 12, 2010